

DOCKET NO. 13 Cr. 589 (PKC)

SEPTEMBER 17, 2020

The Honorable P. Kevin Castel
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

The motion for reconsideration is DENIED. The district court does not appoint appellate counsel.

SO ORDERED

[Signature], U.S.D.J.

Re: United States v. Jose Aramis Brito, Docket No. 13 Cr. 589 (PKC)

10-13-20

Dear Judge Castel:

Defendant, *pro se*, respectfully submits this letter-motion seeking both reconsideration of the Court's September 15, 2020 Order denying his *pro se* motion for compassionate release, pursuant to S.D.N.Y. Local Rule 6.3, and/or order appointing CJA counsel to represent him on appeal from that order. For the reasons set forth hereinafter, this motion should be granted.

As a preliminary matter, while a motion for reconsideration "is not a vehicle for relitigating old issues, presenting the case under new theories . . . or otherwise taking a second bite at the apple," *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012), motions for reconsideration are properly granted if there is a showing of: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) **a need to correct clear error or prevent manifest injustice.** *Virginia L. Giuffre v. Ghislaine Maxwell*, No. 15 Civ. 7433 (LAP), 2020 WL 4362257, at *7 (S.D.N.Y. July 29, 2020).

On September 8, 2020, the Government filed its opposition to Defendant's *pro se* emergency compassionate release motion. On September 9, 2020, moving *pro se* (and subsequently in a counseled submission), Defendant filed a reply. The Court, on September 15, 2020, denied the motion for compassionate release without considering Defendant's *pro se* reply – which contained facts and arguments that may very well have changed the Court's conclusion regarding the existence of "extraordinary and compelling reasons" to modify his sentence. More specifically, the Court appears to have accepted the Government's misrepresentation that the Bureau of Prisons is taking steps to protect Defendant by and through protocol in place for containing the spread of the virus throughout the institution. However, as Defendant expressly provided in his *pro se* reply, staff at F.C.I. Fort Dix, are not following that protocol to the letter, and its failure to do so has previously (and will continue) to jeopardize the safety of Defendant and all other inmates at the institution. The Court also failed to consider Defendant's representations regarding his continued danger to the public – which is non-existent given the steps taken by Defendant to change his behavior and life, as demonstrated by his exemplary prison record and other steps taken by Defendant to exhibit the total makeover he has undergone while in prison.

The imminent threat of death or serious bodily injury to Defendant is real. That was spelled out in his pro se reply, which was filed with the Court (albeit not docketed). The Court overlooked material facts and arguments that would likely have (from an objective standpoint) changed the outcome of the proceedings. For that reason, alone, reconsideration is warranted as a matter of law.

Finally, insofar as the Court would decline to reconsider its September 15, 2020 Order, Defendant respectfully requests that this letter be docketed as a **NOTICE OF APPEAL** from the September 15, 2020 Order and any order denying this motion for reconsideration. Defendant also requests that the Court, in the interest of justice, appoint CJA counsel to represent him on that appeal inasmuch as Defendant is without the financial means to retain counsel, and is unable to represent himself on appeal. Defendant notes that he has received substantial assistance in both preparing and filing the instant motion (and previous pro se motions) from a non-attorney.

WHEREFORE, Defendants prays that an order granting this motion, in its entirety, will issue forthwith in the interest of justice, and to prevent a complete miscarriage of justice.

Respectfully submitted,

Jose Aramis Brito

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cc: Office of the U.S. Attorney (SDNY)